

MINUTES OF BOARD OF ADJUSTMENT  
SEPTEMBER 8, 2022  
BUFFALO COUNTY COURTHOUSE COMMISSIONER'S ROOM  
4:00 p.m.

Interim Chairperson Pemberton-Riege opened the meeting at 4:00 p.m. at the Buffalo County Courthouse on September 8, 2022.

Agenda for such meeting was regularly posted as required by law.

Interim Chairperson Pemberton-Riege reviewed Lloyd Wilke's resignation and introduced Richard Pierce, as the new member.

After roll call, those present were: Barb Pemberton-Riege, Richard Pierce, Larry Hardesty, Randy Vest, and Rich White. Also present were Deputy County Attorney Andrew Hoffmeister, Zoning Administrator Dennise Daniels and two members of the public.

Quorum is met.

Interim Chairperson Pemberton-Riege turned the Re-Organizational Meeting of Officers over to Zoning Administrator Daniels. She called for nominations for a Chairperson. A nomination was made by Mr. Vest to appoint Barb Pemberton-Riege for Chairperson. Zoning Administrator Daniels called for nominations three times.

Motion was made by Vest, seconded by Hardesty to cease nominations for the Chairperson. Voting "Aye" were: Pierce, Hardesty, Vest, and White.

Abstain: Pemberton-Riege.

Voting "Nay": None.

Absent: Gangwish.

Motion passed.

Zoning Administrator Daniels declared a unanimous ballot. Motion was made by Pierce, seconded by White to cast a unanimous ballot for Barb Pemberton-Riege as Chairperson.

Voting "Aye" were: Hardesty, Pemberton-Riege, Vest, Pierce, and White.

Abstain: None.

Voting "Nay": None.

Absent: Gangwish.

Motion passed.

Zoning Administrator Daniels declared Barb Pemberton-Riege as Chairperson and turned the meeting over to Chairperson Pemberton-Riege.

Chairperson Pemberton-Riege called for nominations for Vice-Chairperson. Mr. Vest nominated Richard Pierce for Vice-Chairperson. Chairperson Pemberton-Riege called for additional nominations. A motion was made by Vest, seconded by White to cease nominations and cast a unanimous ballot for Richard Pierce for Vice-Chairperson.

Voting "Aye" were: Hardesty, Vest, White, and Pemberton-Riege.

Abstain: Pierce.

Voting “Nay”: None.  
Absent: Gangwish.  
Motion passed.

Chairperson Pemberton-Riege called for nominations for Second Vice-Chairperson. Vice-Chairperson Pierce nominated Mr. Vest for Second Vice-Chairperson. Chairperson Pemberton-Riege called for additional nominations. A motion was made by Pierce, seconded by Hardesty to cease nominations and cast a unanimous ballot for Randy Vest for Second Vice-Chairperson. Voting “Aye” were: Pierce, Hardesty, White, Pemberton-Riege.  
Abstain: Vest.  
Voting “Nay”: None.  
Absent: Gangwish.  
Motion passed.

Chairperson Pemberton-Riege announced we do abide by the Open Meeting Act and copies are available for anyone wanting to see it.

Notice of the meeting was given in advance, thereof, by publication in the legal newspaper. A copy of the proof of publication is on file in the Zoning Administrator’s office. Advance notice of the meeting was also given to the Board of Adjustment and availability of the Agenda was communicated in the advance notice. The agenda is available for anyone wanting a copy.

The public forum was opened at 4:05 p.m. No one provided any comment at this time. The public forum closed at 4:06 p.m.

Chairperson Pemberton-Riege opened the public hearing at 4:06 p.m. for a Zoning Variance, received from William and Renae Yockey, aka Ranae Yockey, under Section 5.17, Buffalo County Zoning Regulations, Minimum Yard Requirements, in the Agriculture (AG) District, requiring a minimum rear yard of fifteen (15) feet and a side yard of ten (10) feet, Part of Government Lot 10, in Section Seven (7), Township Eight (8) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Chairperson Pemberton-Riege requested that any parties presenting this application should step forward. Mr. William Yockey and Mrs. Renae Yockey, aka, Mrs. Ranae Yockey, stepped forward to present their application. Mr. Yockey declared that he and his wife were in attendance to request a relaxation of setbacks for a garage. Mr. Yockey explained, with consideration given to his odd-shaped lot and the location of his septic system, there would not be a more desirable location for his structure than where it was proposed to be placed. Mrs. Yockey stated that she and her husband were replacing a garage, which had been destroyed by a tornado on December 15, 2021.

Deputy County Attorney Hoffmeister asked the applicants if they were appealing for the relaxation of both the rear and side setbacks. Mr. Yockey affirmed. Deputy County Attorney Hoffmeister asked Zoning Administrator Daniels what the required side and rear setbacks were. Zoning Administrator Daniels explained side setbacks in this district are ten feet and the rear setbacks are fifteen feet. Mr. Yockey reaffirmed that he would need relaxation on both the side and rear setbacks because his proposed project did not have adequate space. He went to state that

he lives in a rural area, the closest neighbor is ½ mile to the east and west, and his property is completely surrounded by corn fields.

Mr. Yockey testified, when they moved to this property in 1993, no zoning regulations were in place; when they looked into rebuilding their garage, they had believed the same. He stated that he has no other place to put the structure and the proposed location should not create any hinderance for any of the neighbors.

Mr. Yockey attested that he had spoken with the adjoining neighbors and, he said, they didn't have an issue with the garage being put in the same place. Mr. White asked if the proposed garage would be the same size as the original garage. Mr. Yockey replied the proposed garage was larger, but they intended to reuse as much as the original concrete pad as they could for the new structure.

Mr. Hardesty asked the applicants if they had looked into alternatives for the location of the structure. Mr. Yockey answered they had concerns about resituating the structure, based on the location of the well. Mr. Hardesty asked the applicants to the GIS imagery, projected on the wall and show their concerns on their property. Mr. Yockey showed the locations of the septic, well, propane, and power poles that could affect the location of the structure.

Mr. Hardesty said it appeared the applicants would need an additional five feet on the west side, to meet setbacks, and inquired how many feet they needed to satisfy setbacks on the south side. Mr. Yockey answered he would need eight and one half feet on the south side and five feet on the west side.

Mr. White inquired where the entrance of the garage would be located. Mr. Yockey answered the entrance would be located on the north side of the structure.

Mr. Hardesty asked the applicants for the dimensions of the proposed structure. Mr. Yockey responded that the proposed structure was thirty feet by forty-two feet. He showed The Board the structure's proposed site using GIS imagery.

Mr. Hardesty queried the applicants if they had considered making the structure smaller and moving it to meet setbacks. Mr. Yockey explained he could, but would need to lay more cement.

Mr. White asked how much of the area had concrete at this time. Mr. Yockey, using GIS imagery, explained the 2022 aerial photography was relatively accurate, but they had laid additional concrete to the east of the existing pad. He said he had spoken to contractors and they had stated he would not need a permit. Upon that advice, he said, they moved forward with the construction of the replacement garage. At that point, Mr. Yockey continued, he received a letter from The Zoning Office, that he needed a permit for the structure.

Chairperson Pemberton-Riege questioned Zoning Administrator Daniels, if the applicants had put the same-size structure in the same place, would they be they still be in compliance? Zoning Administrator Daniels testified the Assessor's records show the original structure was built in 1994, prior to the adoption of zoning regulations. She went on to say, as a nonconforming structure, it would be allowed to stay. However, she explained, in the event that the structure is destroyed by 60% or more, then the new structure would need to be built to conform to present

regulations. Chairperson Pemberton-Riege spoke to the applicants, stating the 100% loss of the structure was over the percentage to replace the structure exactly as it stood.

Vice-Chairperson Vest asked the applicants, if the aerial photo, using GIS imagery, of a concrete slab showed the original slab or a new slab. Mrs. Yockey explained the aerial image is the original slab, however, they have, since, laid a new concrete approach and added additional concrete to the east. Mrs. Yockey, then, stepped up to the projector and explained where new concrete had been set. Mr. Yockey added that they had a proposed porch on the new garage, as well, so the concrete had been extended.

Deputy County Attorney Hoffmeister asked the applicants where their property was located. Mr. Yockey replied they were located south of Gibbon, along the Platte River.

Mr. Hardesty declared he had conducted a drive-by inspection of the property and he believes the applicants are too close to the neighbor's property. Mr. Yockey agreed and said that he had spoken with the adjoining property owner and he had told Mr. Yockey he had no concerns with the location of the proposed structure. Mr. Hardesty asked the applicants if they had considered purchasing a tract of land to ensure setbacks. Mr. Yockey stated he understood the minimum acres for a subdivision is three.

Deputy County Attorney Hoffmeister stated The Board needed to consider what evidence was provided to them. He explained that accessory structures, under Section 8.1, second paragraph, of Buffalo County Zoning Regulations, could not exceed more than 30% of the lot's surface. He asked Zoning Administrator Daniels what the size of the lot was. Zoning Administrator Daniels explained it is approximately ½ acre. Deputy County Attorney Hoffmeister read Section 8.1, second paragraph to the room. He asked Zoning Administrator Daniels how much of the lot is already being consumed by structures. As Zoning Administrator Daniels was running the calculations, Vice-Chairperson Vest explained setbacks are extremely important to allow for space between tracts of land that could, potentially, be subdivided, as well as for emergency vehicles. When Zoning Administrator Daniels completed her calculations, she answered the applicants are consuming approximately 15% of the lot. Deputy County Attorney Hoffmeister explained this regulation is important to ensure residents are not occupying every inch of their properties.

Vice-Chairperson Vest asked Deputy County Attorney Hoffmeister if concrete could encroach into the required setbacks. Deputy County Attorney Hoffmeister explained concrete was allowable, so long as a structure was not in the setback.

Mrs. Yockey asked if there were setbacks associated with propane tanks or power poles. Vice-Chairperson Vest asked how many feet were between the power pole and the existing pad. Zoning Administrator Daniels measured, using GIS imagery, approximately 37 feet from the existing power pole to the concrete, shown on the 2022 imagery. Mrs. Yockey asked if there was a setback between the power pole and the structure. Deputy County Attorney Hoffmeister replied, as long as the side and rear setbacks were satisfied, she could place the structure where they wished. He, further, testified concrete could exist, just not structures. Discussion occurred regarding moving the structure to the east and the moving propane tanks. Zoning Administrator Daniels assured the applicants there are no setback requirements for power poles or propane tanks. Discussion, further, occurred regarding the distances the structure could be moved

northeasterly. Deputy County Attorney Hoffmeister added there are no minimum setbacks between structures. Discussion occurred if the applicants would need to move the entrance of the structure, based on the distances, to ensure their vehicles would be able to enter.

Deputy County Attorney Hoffmeister asked if the property lines were determined by a surveyor. Mr. Yockey stated they had it surveyed when they purchased the property.

Mr. Hardesty declared to the applicants it was not The Board's decision to establish a solution for them, but rather, to establish if an undue hardship was discovered. He stated that the applicants purchased a large structure, prior to submitting an application for Zoning Permit, and The Board needs to consider the precedent they are setting for future requests for setback relaxation. He stated the structure could be made smaller or it could, potentially, be moved. Vice-Chairperson Vest reaffirmed Mr. Hardesty's declaration.

Mrs. Yockey asked The Board how, as a citizen of Buffalo County, she could be made aware of changes that are happening in zoning. Deputy County Attorney Hoffmeister asked if the applicants were residents of Buffalo County in the early 2000's. Deputy County Attorney Hoffmeister explained several changes were made to the comprehensive plans, zoning map amendments, and code amendments since the enactment of zoning in the early 2000's and are publicized to provide notice.

Deputy County Attorney Hoffmeister asked Zoning Administrator Daniels if the subject property was in the floodplain. Zoning Administrator Daniels responded that it was not. Vice-Chairperson Vest articulated to the applicants, The Planning Commission has gone to great lengths, such as public meetings, media interviews, etc., to ensure the public of Buffalo County is aware of The Comprehensive Plan, as it is currently under review.

Deputy County Attorney Hoffmeister pronounced to The Board and the applicants that The Zoning Administrator denied the Zoning Permit due to insufficient setbacks. He articulated the appeal was filed was to overturn The Zoning Administrator's decision, and it will take four, of five, votes to do so. He, further, explained the applicants will need to resubmit a compliant application, which will be approved by The Zoning Administrator.

Vice-Chairperson Pierce asked if the applicants could purchase land to meet setbacks and still allow the structure to be constructed. Mr. Yockey said he was under the impression that the minimum acre size was three acres. Deputy County Attorney Hoffmeister affirmed and said that subdivisions of land would need to be a minimum of three acres and an additional dedication of right-of-way. Deputy County Attorney Hoffmeister explained the obstacles associated with subdivisions of land.

Chairperson Pemberton-Riege asked for further discussion.

Chairperson Pemberton-Riege asked if the applicants had received the strict application guidelines The Board of Adjustment is charged with, to review for any application. Zoning Administrator Daniels stated she had not and provided her packet of regulations regarding the strict application, to the applicants. Chairperson Pemberton-Riege reviewed the guidelines with the applicants. Mr. Hardesty added, The Board's role is not to provide an alternative, but to

decide if an undue hardship is endured. He stated, although having an additional cost to create a compliant structure is inconvenient, it is not a hardship.

Chairperson Pemberton-Riege asked for additional questions or comments. No comments were made.

Chairperson Pemberton-Riege closed the public hearing at 4:46 p.m.

A motion was made by Mr. Hardesty, seconded by Second Vice-Chairperson Vest, to disapprove the request for the variance of Section 5.17, Buffalo County Zoning Regulations, Minimum Yard Requirements, which requires a minimum rear yard of fifteen (15) feet and a side yard of ten (10) feet and affirming the decision made by the zoning administrator, for property described as Part of Government Lot 10, in Section Seven (7), Township Eight (8) North, Range Thirteen (13) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

This Board finds that there was insufficient evidence to overturn the decision made by The Zoning Administrator.

Deputy County Attorney Hoffmeister articulated the applicants could reapply with a compliant structure.

Voting “Aye”: Pierce, Hardesty, Vest, White, Pemberton-Riege.

Absent: Gangwish.

Abstain: None.

Voting “Nay”: None.

Motion carried.

Moved by Mr. Hardesty, seconded by Mr. White to approve the minutes of the October 28, 2021 meeting, of the Board of Adjustment, as mailed.

Voting “Aye”: Hardesty, Vest, White, and Pemberton-Riege.

Absent: Gangwish.

Abstain: Pierce.

Voting “Nay”: None.

Motion carried.

Chairperson Pemberton-Riege asked Zoning Administrator Daniels if there was other business. Zoning Administrator Daniels said, in the October 2021 meeting, when Lloyd Wilke presented his resignation, she would research how many years Mr. Wilke had served on The Board of Adjustment. After some review, Mr. Wilke had served 19 years on the Board of Adjustment. She explained she sent him a Certificate of Appreciation.

Deputy County Attorney Hoffmeister asked Zoning Administrator Daniels who was the dual member to the Planning Commission and Zoning Administrator Daniels answered, Randy Vest.

Discussion occurred regarding future subdivisions in this area.

Deputy County Attorney Hoffmeister reviewed the regulation, Section 8.1, regarding 30% land usage of a lot. He recommended amending and adding this regulation to the Agriculture (AG) and Agricultural – Residential (AGR) Districts. Discussion occurred regarding accessory structures and how heavily they are used.

Chairperson Pemberton-Riege adjourned the meeting at 5:09 P.M. until such time they will be called into session.

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Chairperson Barb Pemberton-Riege